

MAILED

NOV 08 2004

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN PITTS, BRUCE SWAYBILL,
PATRICIA A. DERWINSKI and HUGH JAMES O'DONNELL

Application No. 09/970,587

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received *via* Image File Wrapper (IFW) at the Board of Patent Appeals and Interferences on September 29, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellants filed an Information Disclosure Statement (IDS) on March 19, 2003. A review of the IFW reveals that the examiner has not considered the March 19, 2003 IDS on the record. According to the Manual of Patent Examining Procedure (MPEP) § 609(C)(2) (Eighth Ed., Rev. 2, May 2004):

Examiners must consider all citations submitted in conformance with the rules and this section, and their initials when placed adjacent to the considered citations on the list or in the boxes provided on a form PTO-1449 . . . provides a clear record of which citations have been considered by the Office. . . . Those citations not considered by the examiner will have a line drawn through the citation and any citations considered will have the examiner's initials adjacent thereto . . .

It is not clear whether the examiner considered the March 19, 2003 IDS.

Accordingly, it is

ORDERED that the application is returned to the examiner for

- (1) proper consideration of the IDS filed March 19, 2003,
- (2) notification to appellant in writing of such consideration, and
- (3) for such further action as may be appropriate.

Application No. 09/970,587

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
KIMBERLY JORDAN
Program and Resource Administrator
(571) 272-9797

cc: THEODORE W. OLDS
CARLSON, GASKEY & OLDS, P.C.
SUITE 350
400 WEST MAPLE ROAD
BIRMINGHAM, MI 48009

KJ/vsh
RA05-0022